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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Philippe Bordes

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EXAMINER

SCHWARTZ, DARREN B

ART UNIT

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2435

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,118	Applicant(s) BORDES ET AL.	
	Examiner DARREN SCHWARTZ	Art Unit 2435	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03-16-05 05-15-08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. In light of the amendments to the abstract and specification, the objections are withdrawn.
2. The Examiner notes that the REMARKS, replacement Specification and replacement Abstract all cite in the upper-left corner, "Application No. 10523118" and should read "Application No. 10522118." Appropriate correction is required.
3. The Examiner acknowledges the cancellation of claims 4, 6-12 and the incorporation of the subject matter of claim 4 into claim 1.
4. In light of the amendments to claim 1 and the cancellation of claims 4, 6, 7, 11 and 12, the claim objections are withdrawn.
5. Applicant's arguments filed 06 October 2008 have been fully considered but they are not persuasive.
6. Applicant argues on page 17 that the combination of Fukami and Ginter fail to teach "upon completion of the telephone communication with a user terminal, a duration of telephone communication is determined in said call center as to draw up a **bill** corresponding to the reception of the program by the user terminal." Applicant further

Art Unit: 2435

states that Ginter "...does not specify what is to be metered or how to perform a metering function."

The Examiner disagrees. Ginter teaches, at least, the following regarding "upon completion of the telephone communication with a user terminal, a duration of telephone communication is determined in said call center as to draw up a **bill** corresponding to the reception of the program by the user terminal:"

"VDE allows the owners and distributors of electronic digital information to reliably bill for, and securely control, audit, and budget the use of, electronic information. It can reliably detect and monitor the use of commercial information products. VDE uses a wide variety of different electronic information delivery means: including, for example, digital networks, digital broadcast, and physical storage media such as optical and magnetic disks. VDE can be used by major network providers, hardware manufacturers, owners of electronic information, providers of such information, and clearinghouses that gather usage information regarding, and bill for the use of, electronic information" (col 3, lines 21-33).

"In this FIG. 2 example, information relating to content use is, as shown by arrow 114, reported to a financial clearinghouse 116. Based on this "reporting," the financial clearinghouse 116 may generate a bill and send it to the content user 112 over a "reports and payments" network

Art Unit: 2435

118. Arrow 120 shows the content user 112 providing payments for content usage to the financial clearinghouse 116" (col 55, lines 57-66).

"FIG. 53c is a flowchart of an example of process control steps performed by a BILLING method 1980. Examples of BILLING methods are set forth in FIGS. 49d, 50d, and 51d and are described above. BILLING method 1980 shown in FIG. 53c is somewhat more generalized than the examples above. Like the BILLING method examples above, BILLING method 1980 receives a meter value to determine the amount to bill" (col 189, lines 34-41).

"The BILLING method map MDE in this example may describe the pricing algorithm that should be used in this BILLING method (e.g., bill \$0.001 per byte of content released)" (col 189, lines 53-56).

"With VDE installed, appliances could also be managed by secure identification (PIN, voice or signature recognition, etc.). This might be required each time a unit is used, or on some periodic basis. Failure to use the secure identification or use it on a timely basis could disable an appliance if a PPE 650 issued one or more instructions (or failed to decrypt or otherwise provide certain information critical to appliance operation) that prevented use of a portion or all of the appliance's functions. This feature would greatly reduce the desirability of stealing an electronic appliance. A further, allied use of VDE is the "registration" of a VDE secure subsystem in a given appliance with a VDE secure

Art Unit: 2435

subsystem at some control location in a home or business. This control location might also be responsible for VDE remote communications and/or centralized administration (including, for example, restricting your children from viewing R rated movies either on television or videocassettes through the recognition of data indicating that a given movie, song, channel, game, etc. was R rated and allowing a parent to restrict viewing or listening). Such a control location may, for example, also gather information on consumption of water, gas, electricity, telephone usage, etc. (either through use of PPEs 650 integrated in control means for measuring and/or controlling such consumption, or through one or more signals generated by non-VDE systems and delivered to a VDE secure subsystem, for example, for processing, usage control (e.g. usage limiting), and/or billing), transmit such information to one or more utilities, pay for such consumption using VDE secured electronic currency and/or credit, etc" (col 318, lines 12-41).

The Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claims, other passages and figures may apply as well. Applicant should consider the entire prior art as applicable as to the limitations of

Art Unit: 2435

the claims (see *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) [MPEP: 2141.02 VI]).

7. For at least the reasons stated above, the Examiner upholds Ginter and further upholds the combination of Fukami and Ginter.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukami et al (U.S. Pat Pub 2002/0080971 A1), hereinafter referred to as Fukami, in view of Ginter et al (U.S. Pat 5982891 A), hereinafter referred to as Ginter.

Re claim 1: Fukami teaches a method of distributing encrypted portions of an audiovisual program to user terminals in which the successive portions of the program are encrypted with the aid of different keys (¶6, ¶456-¶457), wherein, on initiation, from a user terminal (¶4, ¶41-42), of a telephone communication with a call center [Fig 1, elt 100: Broadcast apparatus] (¶521), in transmitting in sequence (¶162, ¶369) from said call center and during the telephone communication the keys to the user terminal [Fig 1, elt 200: Reception apparatus] (Fig 1: elt TS; Fig 2; ¶162), where doing said transmission

Art Unit: 2435

is performed in a manner synchronized with the distribution of the successive encrypted portions of the program (¶163-¶171).

However, Ginter teaches on completion of the telephone communication with a user terminal, a duration of telephone [metering: col 14, lines 49-62] communication is determined in the call center so as to draw up a bill corresponding to the reception of the program by the user terminal (col 3, lines 21-33; col 55, lines 57-66; col 189, lines 34-41; col 132, lines 12-25; col 189, lines 53-56; col 318, lines 12-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Fukami reference to meter and bill user usage, as taught by Ginter, for the purpose of providing moneys to content distributors

Re claim 2: The combination of Fukami and Ginter teaches the telephone communication utilizes an Internet protocol (Fukami: ¶521).

Re claim 3: The combination of Fukami and Ginter teaches synchronization time codes are transmitted with the keys to the user terminal (Fukami: ¶162, ¶369).

Re claim 5: The combination of Fukami and Ginter teaches the call center is a center for receiving telephone calls of a telephone operator (Ginter: col 161, 13-26).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as

Art Unit: 2435

well. It is respectfully requested from the applicant in preparing responses to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the text of the passage taught by the prior art or disclosed by the examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARREN SCHWARTZ whose telephone number is (571)270-3850. The examiner can normally be reached on 8am-4pm.

Art Unit: 2435

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571)272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. S./

Examiner, Art Unit 2435

/Kimyen Vu/

Supervisory Patent Examiner, Art Unit 2435